Guidelines For Voluntary Disclosure Agreements

General Information

R&TC Section 19191 authorizes the FTB to enter into voluntary disclosure agreements with any qualified business entity or shareholder in order to obtain voluntary compliance with the tax laws of the State of California. Qualified business entitites or shareholders that participate in the Voluntary Disclosure Program are required to file returns only for the six income years ending immediately prior to the date the agreement is signed. FTB may waive penalties associated with the return filings. As part of the voluntary disclosure agreement, the FTB will waive its authority to assess taxes, additions to taxes, fees, or penalties for the income years ending prior to the six income years covered by the disclosure agreement.

Qualified business entities or shareholders entering into a voluntary discosure agreement must fully disclose all material facts pertinent to its franchise or income tax liability. In addition, the qualified business entity or shareholder must file all returns and pay all taxes associated with the income years covered by the agreement within 30 days of the date the agreement is signed. Installment payment arrangements may be entered into in some instances. Failure to adhere to the terms of the agreement will render the agreement null and void.

Qualified Business Entities

Only qualified business entities are eligible to participate in the Voluntary Disclosure Program. A ''qualified business entity'' is an entity that meets **all** of the following criteria. It must:

1. Be a bank or corporation;
2. Have never filed a return with the FTB;
3. Have not been the subject of an inquiry by FTB with respect to liability for any taxes; and
4. Have voluntarily come forward, prior to any unilateral contact from the FTB, and completed both an application for a voluntary disclosure agreement and a full and accurate statement of its activities in California for the six immediately preceding taxable or income years.

Even if a bank or corporation meets all of the above listed criteria, the bank or corporation will not be considered a ''qualified business entity'' and will not be eligible to participate in the voluntary disclosure program if it is:

- organized and existing under the laws of California;
- qualified or registered with the Office of the Secretary of State of California; or
- a business entity that maintains and staffs a permanent facility in California. (The storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in California.)

Qualified Shareholders

A qualified shareholder is an individual who is both:

1. A nonresident on the signing date of the voluntary disclosure agreement; and
2. A shareholder in an S corporation that has applied for a voluntary disclosure agreement and all the material facts pertinent to the shareholder's liability would be disclosed on that S corporation's voluntary disclosure agreement.

Important: Penalties associated with voluntary disclosure will not be waived for income years before the signing date of the agreement in which the shareholder was a California resident. Any penalties or additions to tax attributable to income other than California source income from the S corporation filing the application for voluntary disclosure will not be waived.

Requirements

Any qualified business entity or shareholder entering into a voluntary disclosure agreement must fully disclose all material facts pertaining to its franchise or income tax liability. The qualified business entity or shareholder has 30 days to file tax returns and pay all applicable taxes and interest once the voluntary disclosure agreement is signed.

In addition, the qualified business entity or shareholder must also agree to continue filing tax returns and paying any tax due in the future.

In return, as part of the voluntary disclosure agreement, the Franchise Tax Board will waive its authority to assess the following for the income years ending prior to the six income years covered by the disclosure agreement:

- taxes or additions to taxes,
- fees, and
- penalties.

Penalties Waived

If the qualified business entity fully complies with the Voluntary Disclosure Agreement, the Franchise Tax Board may waive any or all of the following penalties:

- Section 19131 — failure to make and file a return;
- Section 19132 — failure to pay any amount due by the date prescribed for payment;
- Section 19136 — underpayment of estimated tax;
- Section 19141 — Section 6810 or subdivision (a) of Section 8810 of the Corporation Code (Secretary of State penalty);
- Section 19141.5 — failure to furnish information or maintain records;
- Section 19142 — relating to underpayment of tax;
- Section 19183 — failure to file information returns;
- Section 19172 — late filing of partnership returns; and
- Section 23305.1 — contract voidability. Relief from contract voidability will be granted to a qualified business entity when the terms of the voluntary disclosure agreement are fulfilled.

Violation of the Agreement

The voluntary disclosure agreement will be null and void if the qualified business entity or shareholder:

- misrepresents material facts relevant to the agreement;
- fails to file returns or pay taxes for the periods covered by the agreement;
- reneges on an installment payment arrangement;
- understates the tax liability for any year covered by the agreement and cannot show a good faith effort to accurately compute the tax liability; or
- fails to continue to comply with California tax law.

Requesting the Agreement

Qualified business entities or shareholders that wish to apply for a voluntary disclosure agreement can call the toll-free number listed below and request FTB Form 4925, Application for Voluntary Disclosure.

Note: It is not necessary for the qualified entity or shareholder to identify themselves until tax returns are filed.

Telephone Assistance

Questions about the Voluntary Disclosure Agreement program can be directed to the:

Corporation Filing Enforcement Unit
(916) 845-3294

Note: It is not necessary for the qualified business entity or shareholder to identify themselves to receive information.

Toll-Free:

Our regular toll-free telephone service is available from 7:00 a.m. until 8:00 p.m. Monday through Friday from the first working day in January through the last filing day (generally April 15). The best times to call are between 7:00 and 10:00 in the morning and between 6:00 and 8:00 in the evening. Service is also available from 8:00 a.m. through 5:00 p.m. on the two Saturdays prior to the final filing date. After April 15, service is available Monday through Friday, between 8:00 a.m. and 5:00 p.m.

From within the United States,
call 1-800-852-5711

From outside the United States,
call (not toll-free) 1-916-854-6500

For hearing impaired with TDD,
call 1-800-822-6268